



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 10-09953
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant was \$68,000 past due on his home mortgage, which has gone to foreclosure. He failed to document he has addressed any delinquency arising from the foreclosure. He had five other delinquent accounts which totaled less than \$2,000. He failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a Statement of Reasons (SOR) on November 14, 2011, detailing security concerns under Guideline F, financial considerations.

On December 12, 2012, Applicant answered the SOR and requested a hearing. On March 15, 2012, I was assigned the case. On April 15, 2012, DOHA issued a Notice of Hearing for the hearing held on April 23, 2012.

The Government offered exhibits (Ex.) 1 through 8, which were admitted into evidence without objection. Applicant testified, but did not submit exhibits. One additional witness testified on his behalf. The record was held open to allow Applicant to submit additional information. On April 30, 2012, material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Exs. A through F. On May 1, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, with explanations. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 36-year-old information systems security officer who has worked for a defense contractor since August 2006, and seeks to maintain a security clearance. (Ex. 1) Applicant served honorably in the U.S. Navy from March 1996 through August 2002. His grade at the time of discharge was E-5. (Ex. 6) He is also a full-time student. (Tr. 44)

Applicant's direct supervisor in the security department, who sees Applicant daily, states he holds Applicant in high regard. (Tr. 43) Applicant does above the call of duty and beyond in reporting things that don't seem right. (Tr. 43) His supervisor states Applicant is not living beyond his means. (Tr. 46) Applicant was upfront about reporting his debt. (Tr. 48)

The SOR lists six debts placed for collection, past due, or unpaid. The first five total \$1,793. The final debt was \$68,000 past due on his mortgage. In 2008, Applicant was laid off from his job, resulting in the loss of health insurance and the loss of his home. He had purchased his home in 2007, but was unable to continue making his monthly mortgage payments when he lost his job. (Ex. 5) He owed \$800 (SOR 1.a) for his son's surgery. His son was born May 1998 and needed surgery to repair a hernia and attach a testicle to the lower part of his scrotum. (Tr. 24) Applicant was making \$20 monthly payments on the debt and in April 2012, paid \$500 on this debt. (Ex. A, Tr. 25) This medical bill is now paid.

In 2007, Applicant's company moved him to the company's headquarters in a different state. (Tr. 28) On his arrival in the new state, he purchased a home for \$225,000 with \$700 monthly payments and no money down. (Tr. 36) The monthly payments increased to \$1,485 when the taxes were reassessed. (Tr. 28) The initial

calculation was based on the value of an empty lot and not the fair market value of the home. In March 2007, before purchasing the home, he was divorced. (Ex. 1, Tr. 30) He remarried in November 2008. (Tr. 30)

In 2008, the mortgage went past due two months after Applicant was laid off from employment. (Tr. 29) He provided no additional information as to the length of his unemployment. He continued living in the home for another nine months, until August 2009. (Tr. 29) During an August 2010 personal subject interview, he stated that he did not know the name of the collection agency, but believed he was more than \$40,000 past due on his mortgage and the total due on the account was more than \$215,000. (Ex. 5) At that time, he said he intended to work with an attorney to resolve this matter. However, it was not until April 2012, the month of the hearing, that he retained an attorney. (Tr. 37)

Applicant has retained an attorney to assist him on the foreclosure stating, “I have contacted an attorney to look into the matter for me.” (Tr. 33, 37, 38) Applicant provided no documentation as to the status of this debt. The status of his legal representation is unclear. At the hearing, he stated he had recently been notified that two-and-a-half years after leaving the home, the home was to go to auction in January or February 2012. (Tr. 36). He was going to ask his attorney why it took so long to go to auction. (Tr. 32) He stated he had just recently received the auction notice paperwork and had turned it over to his attorney to determine his best course to alleviate the debt. (Tr. 27) He believes the home’s fair market value is \$150,000. (Tr. 32) He has received no correspondence or information about the sale. (Tr. 36)

As of August 2010, his monthly net income was \$3,400 and his monthly expenses were \$2,130, leaving net discretionary income of \$1,270. (Ex. 5) As of September 2011, his net discretionary income was \$250. (Ex. 6) He owns a 1995 Ford Bronco and a 2001 Ford Ranger pickup truck. (Tr. 34, Tr. 34) He lives with his in-laws and has no credit cards. (Tr. 34) He has funds in his company’s 401(k) retirement fund. As of December 2011, he had \$7,000 in the account when he borrowed \$3,000 to pay medical bills and other bills. (Tr. 35) He borrowed another \$1,336.64 from his 401(k) account and paid the majority of the debts listed in the SOR. (Ex. A)

Applicant contacted his local Veterans Affairs office to determine what financial counseling they offer. (Tr. 39) He has talked with his pastor about financial counseling. (Tr. 39)

A summary of Applicant’s judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Medical account for his son’s surgery. (Ex. 5)	\$800	Paid. Applicant paid \$500 on this debt. (Ex. A)

	Creditor	Amount	Current Status
a	Medical account for his son's surgery. (Ex. 5)	\$800	Paid. Applicant paid \$500 on this debt. (Ex. A)
b	Medical account .	\$64	Paid. (Ex. A) This was incurred for his wife's medical treatment. (Ex. 6)
c	Collection account.	\$175	Paid. (Exs. A and B)
d	Collection account for failing to return cable modem. (Tr. 26)	\$274	Paid \$167.36. (Ex. A) Applicant asserts this bill has now been paid in full. (Ex. A) He asserts he turned in all cable equipment when he moved. (Tr. 26)
e	Collection account for telephone service.	\$480	Applicant terminated his cell phone service contract early when he had lost his job. (Ex. 5, 6) Paid \$399. (Ex. A) Applicant asserts this bill has now been paid in full. (Ex. A)
f	Mortgage account past due.	\$68,000	Home went to foreclosure. Applicant provided no documentation as to the status of this debt.
	Total debt listed in SOR	\$69,793	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent

substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant was \$68,000 past due on his mortgage for a home that has gone to foreclosure. He also had five additional delinquent accounts which totaled less than \$2,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has paid five delinquent accounts alleged in SOR 1.a through 1.e. I find for him as to these debts. His house has gone to foreclosure. He provided no documentation showing that he is no longer obligated on the original mortgage. None of the mitigating factors apply to the mortgage debt. He has not demonstrated that his mortgage debt has been paid it.

In 2007, following his March 2007 divorce, Applicant purchased a house with zero money down. Following the purchase, his monthly mortgage payments doubled when his real property taxes were based on the value of the home and not based on an empty lot. He asserted he was unemployed in 2008, however, he provided no additional information as to how long he was unemployed. When asked about his mortgage in

2010, he stated he believed he was \$40,000 past due on the account and owed approximately \$215,000 on the home. In August 2010, he said he intended to work with an attorney to address the debt, but he did not retain an attorney until April 2012. He believes the house went to auction in January or February of 2012. He provided no documentation establishing that he is no longer responsible on the mortgage following the sale of the home.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The purchase of a home is normally not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. However, concern in a home purchase is raised if that purchase closely follows a divorce and the entire cost of the home is financed with no money down. The home was purchased in 2007. Applicant said he made two payments on the house. In 2009, he moved out of the home, and in 2012 it went to auction.

Such a large unaddressed debt casts doubt on the Applicant's current reliability, trustworthiness, and good judgment. In August 2010, he said he was hiring an attorney to assist him with the foreclosure. He asserts he retained an attorney in April 2012 – 21 months later. Applicant provided no documentation as to what, if anything, the attorney has done to assist him with the debt.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not

merited. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligation arising from the foreclosure, established compliance with a repayment plan, or otherwise addressed the foreclosure debt, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) The debt arising from the foreclosure of his home remains a concern. Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge